

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WESLEY COTTON,

Plaintiff,

v.

MEDINA, ET AL.,

Defendants.

Case No. 1:22-cv-00568-JLT-EPG (PC)

ORDER GRANTING PLAINTIFF'S
UNOPPOSED MOTION FOR
ATTENDANCE OF INCARCERATED
WITNESSES AT TRIAL

(ECF Nos. 140, 144, 167).

Plaintiff Wesley Cotton is proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff alleges that while he was in a locked caged enclosure in the B yard of Corcoran State Prison (CSP), toxic gas from cannisters used to break up a fight in the C yard drifted over and injured him. Defendant Medina failed to protect Plaintiff from the gas and Plaintiff suffered from exposure. (*See generally* ECF No. 1).

Currently, it is disputed if Defendant Medina had contact with Plaintiff on March 19, 2022. (ECF No. 191, p. 3). Plaintiff represents that his proposed incarcerated witnesses were present on Yard 3B when the incident occurred. (ECF Nos. 144, 167). Furthermore, Plaintiff states that the proposed witnesses, all of which are currently incarcerated at Corcoran State Prison, have agreed to voluntarily testify and possess “critical facts based on direct eyewitness observation and personal knowledge of the events that occurred on March 19, 2022, on 3B yard.” (ECF No. 167, p.2). Trial is currently set for January 27, 2026 (ECF No. 131).

1 Before the Court is Plaintiffs timely filed and unopposed motion for attendance of six
2 incarcerated witnesses¹ (ECF No. 167) and the supplement to the motion, providing
3 declarations from each of the witnesses. (ECF No. 144). For the reasons stated below, the Court
4 grants Plaintiff's motion.

5 "The determination whether to issue a writ of habeas corpus ad testificandum rests within
6 the sound discretion of the district court." *Cummings v. Adams*, No. CV F 03 5294 DLB, 2006
7 WL 449095, at *3 (E.D. Cal. Feb. 21, 2006). In deciding whether to grant Plaintiff's motion for
8 the attendance of incarcerated witnesses, the Court considers the following factors: (1) whether
9 the inmate's presence will substantially further the resolution of the case, (2) the security risks
10 presented by the inmate's presence, (3) the expense of transportation and security, and
11 (4) whether the suit can be stayed until the inmate is released without prejudice to the cause
12 asserted. *Wiggins v. County of Alameda*, 717 F.2d 466, 468 n.1 (9th Cir. 1983).

13 After conducting a "cost-benefit analysis regarding whether the inmate[s] should come
14 to court," 2006 WL 449095, at *3, the Court has determined that the inmates should be made
15 available to testify at trial. The first factor weighs in Plaintiff's favor. Each of the witnesses
16 provided a declaration under the penalty of perjury, which recounts what each witness
17 personally viewed the incident at issue in the case. Furthermore, some of the witnesses identify
18 Defendant as being present during the incident and having contact with Plaintiff, and some of
19 the witnesses were exposed to the gas that was used during the incident. (*See* ECF No. 144).
20 Plaintiff has demonstrated that the presence of the witnesses will aid in the resolution of this
21 case.

22 The remaining factors also support Plaintiff. Because the motion is unopposed, nothing
23 suggests that these inmates present particular security concerns or exceptional transportation
24 costs. And given the age of this case, staying it until all of the incarcerated witnesses are
25 released would be prejudicial.
26

27 ¹ Cesario Medina, Clifford Lewis, Christopher G. Valencia, Duncan Reynard, Paul Fielder, Gino
28 Brewer.

1 Thus, the Court finds that Medina, Lewis, Valencia, Reynard, Fielder and, Brewer
2 should be provided the opportunity to testify at trial.

3 Based on the foregoing, IT IS ORDERED that :

- 4 1. Plaintiff's motion for attendance of incarcerated witnesses, ECF No. 167, is
5 GRANTED.²
- 6 2. The parties are directed to meet and confer regarding whether the witnesses should
7 testify live or remotely and file a statement no later than November 26, 2025,
8 regarding whether they both wish to proceed by remote testimony. However, in the
9 absence of agreement, the Court will require transportation of all witnesses for live
10 testimony.
- 11 3. The Court will, in due course, issue a writ of habeas corpus ad testificandum to have
12 Cesario Medina, Clifford Lewis, Christopher G. Valencia, Duncan Reynard, Paul
13 Fielder, Gino Brewer be made available to testify at the trial.

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15 IT IS SO ORDERED.

16 Dated: November 20, 2025

17 /s/ Eric P. Grogan
18 UNITED STATES MAGISTRATE JUDGE
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28 ² In ruling on this motion, the Court is not making any evidentiary rulings. Nothing in this order prevents Defendants from raising objections to the testimony of the witnesses at trial or in an appropriate pretrial motion.